



## What May I File?

### Request For Review of Commissioner's Order

- you want to appeal a final order from a Commissioner
- you want a Judge to review the hearing and the Commissioner's decision.
- you are prepared to pay the costs of a transcript

### Motion for Re-argument

- you want the Court to reconsider its decision
- you want to reargue your position to the hearing officer that issued the decision.
- you are prepared to briefly reargue your position in your motion.

### Rule 60 Motion

- you believe that the Court made a clerical or mathematical error in its decision
- you have newly discovered evidence to present to the Court

# Review of Commissioner's Order/Re-arguments

A GUIDE TO APPEALING A COMMISSIONER'S DECISION IN THE FAMILY COURT

## FAMILY COURT OF THE STATE OF DELAWARE

<http://courts.state.de.us/family>

### 1. What is a Review of Commissioner's Order?

A Request to Review a Commissioner's Order is a way of appealing a Commissioner's decision. By filing this request, you are asking a judge to make a new determination about the portions of the Commissioner's Order to which you object.

### 2. How do I Request a Review of Commissioner's Order?

You must file a Request to Review Commissioner's Order with the Court. These forms are available at the Family Court Resource Centers and on our webpage <http://www.state.de.us/family>.

### 3. When should I file?

You must file a Request to Review Commissioner's Order within 10 days from the date of the Commissioner's Order. If you fail to file within that timeframe, the Court may not consider your request. You may not appeal an ex parte or default order.

### 4. What will happen after I file?

After you file your Request for Review of Commissioner's Order, the Court will send you a letter explaining how much it will cost to have a transcript of the hearing prepared. After you have paid for the transcript preparation, the transcript, along with your Request for Review, will be sent to a judge for a decision. The judge will issue an order informing you of their decision. The judge can either deny your request, send the order back to the Commissioner for their reconsideration or issue a new order.

### 5. What if I cannot afford the transcript preparation?

If you cannot afford to pay for the transcript, you may file a Motion to Waive Transcript Fees. In this motion, you should clearly explain to the Court why you cannot pay the costs associated with the preparation of the transcript.

Review of Commissioner's Orders are governed by 10 Del.C. Section 915.

### 6. What is a Motion for Re-argument?

A Motion for Re-argument is a request that the Court reconsider an argument that was made during a hearing. The purpose is not to reargue an entire case, rather, to ask the court to reconsider its decision by briefly rearguing one's position.

## **7. Why should I file a motion for re-argument?**

You should file a Motion for Re-Argument whenever you want the Commissioner who decided the case to reconsider his or her decision. It is especially useful if you think the Commissioner misunderstood some of the evidence, made an unintentional mistake, or you don't understand the Commissioner's reasoning. There is no filing fee for a Motion for Re-argument.

## **8. When do I file a Motion for Re-argument?**

You must file a Motion for Re-argument within 10 days from the date of the Court Order.

Motions to Reargue are governed by Family Court Rule of Civil Procedure 59.

## **8. How do I file a Motion for Re-argument?**

You may obtain a Generic Motion form from the Family Court Resource Center or on our webpage at <http://www.state.de.us/family>. In your Motion for Re-argument, you must briefly and distinctly state your reasons for requesting that the Court reconsider its decision.

## **9. What will happen after I file?**

After you file your Motion for Re-argument and the Respondent is served with that Motion, the Respondent will have 10 days to file a brief answer to each ground asserted in the Motion. The Court will then review the Motion and Answer and determine whether Re-argument will be granted.

Motions for Re-argument are governed by Family Court Rule of Civil Procedure 59(e).

## **10. Can I file both a Motion for Re-argument and a Review of Commissioner's Order?**

You may, but it is not necessary. You have 10 days from the date of the order to file a Motion for Re-argument. You also have 10 days to file for a Review of Commissioner's Order. However, a timely filing for Re-argument stops the time to file a Review of Commissioner's Order. In other words, if your Motion for Re-argument is unsuccessful, you will then have 10 days to file a Review of Commissioner's Order.

## **11. What is a Motion to Reopen?**

A motion to re-open is the only available remedy to get the Court to re-consider a decision after the period allowed for a Motion for Re-argument or Review of a Commissioner's Order. It is especially useful to fix typographical or mathematical errors that are discovered later in time. However it is also available to persuade the Court for reasons of law or fairness that the original order should not have issued. A litigant should carefully read Family Court Civil Rule 60 before filing a motion to re-open. In most instances the person who files such a motion will have to persuade the Court that the alleged flaws in the original decision could not have been fixed by use of the usual appeal process such as a timely motion for re-argument and/or a review of a commissioner's order. A filing fee is required on a motion to re-open in most types of cases.

## **12. What do I do if I believe the Judge or Commissioner made a mistake in my Order?**

If you believe a clerical or mathematical mistake was made, or if you have newly discovered evidence that you wish to present to the Court, you may file a Motion pursuant to Civil Rule 60. In that Motion, you should clearly explain to the Court what error was made or what new evidence you have to present.

Relief from Judgment of Order is governed by Family Court Rule of Civil Procedure 60.